says, that even assuming that the relationship of agency existed up to the date of sale it was terminated as at that date, and the relationship of vendor and purchaser was established. In the present case the parties have mutually agreed that the goods shall remain the property of the appellants and be held on their behalf until the goods have been paid for. For the reasons already given I can see no reason why such an agency should not be established, and that the question of fact in this case, viz., what is the intention of the parties as ascertained in the terms of the agreements, should be answered in favour of the appellants.

In my opinion the appeal should be allowed, with costs.

Their Lordships dismissed the appeal, with expenses.

Counsel for the Pursuers (Appellants)—Leslie Scott, K.C.—Edwards Forster. Agent—John Bransbury, Solicitor. London.

Counsel for the Defenders (Respondents)—Hon. W. Watson, K.C.—Pringle. Agents—Rosslyn, Mitchell, & Tullis Cochran, Glasgow—W. Carter Rutherford, S.S.C., Edinburgh—Jacobs & Greenwood, Solicitors, London.

COURT OF SESSION.

Wednesday, October 31.

SECOND DIVISION.

[Lord Anderson, Ordinary.

HOOD *v.* ANCHOR LINE (HENDERSON BROTHERS) LIMITED.

(*Reported ante*, 53 S.L.R. 429.)

Ship — Carriage — Contract — Carriage of Passengers — Conditions on Ticket Limiting Liability of Carrier—Notice of Conditions.

A passenger on a trans-Atlantic steamer, who brought an action against the owners thereof for damages for injuries sustained by him during the voyage, averred that his attention had not been drawn to conditions on the ticket limiting the liability of the shipping company to £10 in the event of an accident occurring. *Held* that in the circumstances the shipowners had given reasonable notice of the conditions to the passenger.

John Hood, Belfast and New York, U.S.A., *pursuer*, brought an action against the Anchor Line (Henderson Brothers), Limited, Glasgow, *defenders*, for payment of £10,000 damages for personal injuries sustained by him through the negligence of the defenders' servants while a passenger on one of the defenders' steamers on a voyage between New York and Glasgow.

The defenders *pleaded* — "2. In respect that in terms of the contract between the pursuer and the defenders the pursuer cannot in any event recover a larger sum than £10, the action is incompetent in the Court of Session, and ought therefore to be dismissed."

The *facts* of the case appear from the opinion of the Lord Ordinary (ANDERSON), who, a proof having after sundry procedure been allowed and led, on 23rd December 1916 sustained the defenders' second plea and dismissed the action.

Opinion. — "On 25th February 1916 the Second Division, on a reclaiming note against my interlocutor of 16th December 1915 allowing a proof before answer, remitted the cause to me 'to allow to the parties a proof of their averments as to the terms and conditions of the contract of carriage between them.' The proof so allowed has now been taken, partly before me and partly before commissioners in New York.

"The material facts and circumstances established by the proof are these: — The pursuer is a Scoto-American who conducts a successful business as a linen importer at New York and Belfast. He has frequently crossed the Atlantic. For five years prior to 1914 he had been in use to make the crossing two or three times a-year, and he travelled oftener by the defenders' line, which plies between New York and Glasgow, than by any other line. The practice of the pursuer as to booking a passage varied. The first step was to reserve a stateroom in anticipation of a particular voyage. The next step was to take the stateroom reserved. The pursuer generally attended to these matters himself. The next step was to pay for and receive the contract ticket. Payment was usually made by a cheque on pursuer's bank account. Occasionally the pursuer went himself with the cheque to defenders' booking-office and obtained his ticket. More usually, however, the pursuer sent a clerk with the cheque to get the ticket. The clerk on his return with the ticket generally handed it to the pursuer.

"In June 1914 the pursuer, by telephone message, reserved a stateroom on the defenders' steamship 'California,' which was to sail from New York for Glasgow at noon on 20th June. Four or five days prior to the sailing of the vessel the defenders' booking-clerk at New York telephoned the pursuer inquiring whether he was to sail on the 'California.' The pursuer replied that he was, and he was then requested to send a cheque for 150 dollars, the amount of the passage money for himself and Mrs Hood. On the defenders' line all fares are payable before the passengers embark. The pursuer drew a cheque in favour of the defenders for the said sum, and on 16th June handed the cheque to his clerk, Mr May, with instructions to take it to defenders' booking-office and get in return the contract ticket. Mr May went to the defenders' office, and in return for the cheque got from the defenders' employee, Mr Newsom, the contract ticket. There was only one ticket containing the names of Mr and Mrs Hood. I hold it proved that No. 11 of process is a portion of the said ticket. The ticket according to the invariable practice of the defenders was handed to Mr May enclosed

in an envelope, to which I shall make more particular reference in the sequel. When Mr May returned with the ticket to the pursuer's office, the pursuer, who lives 17 miles out of New York, had gone home. Mr May accordingly placed the ticket in the office safe. The legal position of Mr May in connection with this transaction was that of agent of the pursuer.

"The ticket remained in the office safe until the evening of the 19th June, when Mr May on the pursuer's instructions took it along with other documents and some parcels to the pursuer's home in the country. The envelope containing the ticket was placed on a chiffonier in the pursuer's bedroom, where it remained until the following day. The arrangements made by the pursuer for embarkation were that Mr May should take the ticket and Mrs Hood to the steamer, and that the pursuer, who had business to transact in the forenoon, should join his wife on board. This arrangement was carried out. Mr May and Mrs Hood went on board together, having given up on embarking two of the three sections of which the ticket consists, and on the pursuer coming on board Mr May handed him the third section of the ticket, which was then unenclosed in its envelope. The pursuer without examining the ticket put it in his pocket. Two days later he handed it over to a deck steward. I hold it proved that the pursuer had not examined the ticket during all this period. It is doubtful whether he even saw it, enclosed in its envelope, while it was in his house on the night of the 19th.

"No. 27 of process is a specimen of the contract ticket issued by the defenders at New York. As I have said, it consists of three portions—(1) the contract proper or left-hand section, which is delivered up by the passenger on board and at the end of the voyage is handed by the purser of the steamer to the defenders' officials in Glasgow; (2) the middle section, which contains statistical information required by the Emigration Department of the United States Government; this portion is taken from the passenger at the moment of embarkation and is handed to a Government official before the ship sails; (3) the embarkation slip or 'outward ticket,' which is also delivered up on embarkation and taken possession of by the New York officials of the defenders for the purpose of making up the ship's complete passenger account. After these embarkation slips have been kept for a time they are destroyed, and this part of No. 11 of process is no longer in existence.

"The question arising for decision on the proof is one of fact, and although the pursuer led in the proof the *onus probandi* is on the defender. I find that when the case was being advised in the Inner House (the report is 1916 S.C. 547, 53 S.L.R. 429) Lord Dundas in his judgment indicates that the averments of parties raises two questions—(1) Was the pursuer aware of the condition in question? and (2) if not, did the defenders do what was reasonably sufficient to give him notice of the conditions? These questions may be more shortly and colloquially stated thus—(1) Did he know? and (2) ought he to have known?

"1. *Did he know?*—The burden of proof being where it is, I must hold that the defenders have failed on this first point. I have already stated, with reference to the ticket for the voyage in question, that it is proved that the pursuer never looked at its terms. With reference to the many other tickets he has handled, his evidence is 'that in all the course of my travelling and receiving and giving up tickets similar to No. 11 of process I never, either from motives of curiosity or to see what the conditions of my carriage were, read what was printed on them.' No evidence was brought by the defenders to contradict this sweeping and explicit statement. No witness was adduced to depone that he had seen the pursuer on any occasion perusing one of the defenders' tickets. Although the pursuer's statement which I have quoted seems to me to be, on the part of an acute business man perfectly familiar with a variety of written contracts and well aware that most contracts contain a number of terms or conditions, an extraordinary admission of indifference and supineness, I saw no reason to doubt the credibility of the pursuer on this point, or indeed as to any part of his evidence.

"2. *Ought he to have known?*—I think the defenders have proved that they took means which were reasonably sufficient to give the pursuer notice of the conditions which the contract contained. The present case may be usefully contrasted with that of *Williamson*, 1916 S.C. 554, 53 S.L.R. 433, where it was held that reasonable means were not adopted to notify the passenger of the existence of a similar condition of the contract. In the case of *Williamson* I find this general statement in Lord Salvesen's opinion (pp. 564, 439) as to the proper method of discharging the obligation of a carrier in a question of this nature. 'I agree,' Lord Salvesen says, 'that it has not been proved that the pursuer knew of the conditions and assented to them either expressly or impliedly by accepting his ticket without objection. This, however, is not necessary in order to free the defenders from responsibility, if they did what was reasonably sufficient to give the pursuer notice of the conditions by which they sought to limit their common law liability. The test of this, as expressed by Lord Justice Mellish in *Parker's* case, is that if the carrier does what is sufficient to inform people in general that the ticket contains conditions, then a particular pursuer ought not to be in a better position than other persons on account of his exceptional ignorance or stupidity or carelessness. In the general case I think that the carrier satisfies this test if on the face of the ticket which he issues, and which constitutes evidence of the contract of carriage, there is printed, in type such as ordinary persons can easily read, the conditions upon which he contracts, or if there is printed upon the face of the ticket a notice which calls the passenger's

attention to conditions in similar type printed upon the back.'

"The pursuer's counsel maintained that the defenders have proved nothing except that they delivered the ticket, and that something additional by way of directing the passenger's attention to the condition must be established to entitle the defenders to succeed. No authority was cited in support of this contention, and I am not prepared to assent to it. The defenders are entitled to assume that a passenger will look at his contract ticket, and if the contract ticket presents proper means of directing attention to the conditions, the defenders, in my opinion, discharge the *onus* which the law lays upon them.

"It was also contended on behalf of the pursuer that the condition limiting liability was in effect an offer by the defenders requiring acceptance by the pursuer before it had contractual effect. I agree, but the assent of the pursuer to the restriction of the carrier's liability does not require to be express; it may be implied, and it will be held to have been given impliedly if the carrier takes reasonable means of directing the passenger's attention to the condition in question. The case of *Robinson*, [1915] A.C. 740, decided that a party who signed a contract of carriage was bound by all its terms although he had not troubled to read the contract. The same principle ought to prevail in the case of unsigned contracts if reasonable means have been employed to direct the passenger's attention to the existence of conditions.

"In the present case the circumstances which in my opinion called the attention of the passenger to the existence of conditions which it was his interest and duty to read were these—(1) The fact that in every case the defenders' officials in New York enclose a passenger's ticket in an envelope similar to No. 24 of process. The front of this envelope is covered with printed matter in varying type. The top line, on which the eye of an observer ought first to rest, consists of a hand with index finger pointing to these words printed in prominent type, 'Please read conditions of the enclosed contract.' (2) The size of the contract ticket. The essential particulars which the contract ticket must presumably set forth are these—(*a*) the names of the contracting parties, (*b*) the name of the ship, (*c*) the description of the voyage, (*d*) the date and hour of sailing, (*e*) the stateroom let, and (*f*) the amount of the fare. It is obvious that the contract ticket has more available space than is necessary for the setting forth of these essential particulars, and the passenger ought to have examined the ticket to ascertain how that available space was disposed of. (3) The conditions are all printed on the front of the ticket; they occupy a prominent position in the centre of the ticket, and they are printed in type which is quite legible. (4) The printed conditions are preceded by the word 'Notice' printed in arresting type, and these words in aspecially distinct type—'This ticket is issued to and accepted by the passenger subject to the following conditions.' (5) At the foot of the document, and in a position and in type specially calculated to catch the eye, there is printed this sentence—'Passengers are particularly requested to carefully read the above contract.'

"I am unable to conceive what further or better means the defenders could have employed to bring to the knowledge of passengers the existence of the contract conditions.

"I shall therefore sustain the second plea-in-law stated for the defenders and dismiss the action."

The pursuer reclaimed, and argued—The purchase of the ticket did not constitute the contract here. The contract was formed by the request of the pursuer to the defenders to reserve a berth for him, whereby he got an option to take the berth, and by his subsequent intimation to them of his decision to exercise his option and their agreeing thereto. At the time of that intimation there was no mention of any conditions. And these could not be added at a later period. The pursuer naturally did not look at the conditions printed on the ticket. That was procured by his clerk and constituted merely the voucher entitling the holder to the cabin as well as the receipt for the fare paid. Express notice should have been given to the pursuer of a condition which, in the most unreasonable manner, and framed in obscure terms, excluded him from the ordinary rights of a traveller, viz., to be carried with care. Any limitation or exclusion of the legal liability of the shipowners ought to be most strictly examined and the passenger's assent thereto distinctly proved. The *onus* was on the shipowners to prove that the passenger assented to the condition. There was one thing common to all the cases which dealt with the issue of tickets, namely, that the ticket was issued as a voucher for something. These cases fell under one or other of two classes—first, where a person lying by virtue of a relationship such as carrier, well settled in the law, under certain common law liabilities, sought to impose restrictions on the holder of a ticket; second, where the contract set up depended on what occurred at delivery of the ticket in exchange for goods or the like. In these latter cases there was no antecedent common law relationship to be varied, but everything turned on what was said and done at the time. Examples of the latter type of case were—*Lyons* v. *Caledonian Railway Company*, 1909 S.C. 1185, *per* Lord Kinnear at p. 1195, 46 S.L.R. 848; *Parker* v. *South-Eastern Railway Company*, [1877] 2 C.P.D. 416; *Watkins* v. *Rymill*, [1883] 10 Q.B.D. 178. A carrier being at common law liable to a passenger for injury, the *onus* rested on him to prove the passenger's assent to a condition excluding that common law liability, seeing that the passenger was not bound to read the printed matter on the ticket. The carrier preserved silence, although being in direct personal communication with the passenger; he was quite able to draw the latter's attention to the special condition. What was essential and was lacking here was something to prove

the passenger's assent thereto—*Henderson and Others* v. *Stevenson*, (1875) 2 R. (H.L.) 71, *per* Lord Chancellor Cairns at pp. 74 and 75. In the case of unreasonable or unusual conditions of conveyance such consent could not be presumed, but the carrier must bring the conditions to the passenger's notice—*Van Toll* v. *South-Eastern Railway Company*, (1862) 12 C.B. (N.S.) 75, *per* Mr Justice Byles at p. 88. Counsel also referred to Gloag on Contract, p. 37; *Spence* v. *Rowntree*, 9 T.L.R. 297, *per* Lord Justice Lindley; *Grand Trunk Railway Company of Canada* v. *Robinson*, [1915] A.C. 740.

The defenders argued—The communications by telephone did not constitute the contract, but were only to be regarded as the preliminaries leading up to it, which was actually made when the ticket was given in exchange for the money. The defenders were not common carriers—Macnamara's Law of Carriers by Land, p. 17. From the fact that the pursuer used the ticket he must be held to have expressly or impliedly accepted the conditions, his attention to which was drawn by the word "notice," and a reference to the conditions printed in large type on the envelope wherein the ticket was contained. The defenders could not have employed a better method of drawing their passenger's attention to the conditions, and none had been suggested.

LORD JUSTICE-CLERK—This case raises a question not only of importance to the parties but also of general importance. After giving due consideration to the arguments I am unable to find any ground for disturbing the conclusion at which the Lord Ordinary has arrived.

The facts lie in brief compass. Mr Hood, who has been travelling between New York and this country for many years, applied to the defenders for what is called a reservation, under which he got the option of a berth in a steamer which was to sail in the course of the next few days. Some time after he had applied for the reservation he received an inquiry by telephone from the defenders whether he intended to exercise the option he had secured, and in answer he intimated that he was going to do so. He was then told to send down his money, and four or five days before the ship sailed he sent down his clerk, Mr May, to deliver a cheque for the amonnt, and in exchange May received from the defenders' representative a ticket enclosed in an envelope.

In the argument before us it was submitted—I think for the first time, for certainly no such contention was advanced when the case was heard on a previous occasion, and there is no indication in the Lord Ordinary's note of its having been argued in the Outer House—that the contract was completed, not when the ticket and the money were exchanged, but when the pursuer was asked over the telephone whether he proposed to use the reserved berth and replied that he did, and that, accordingly, no mention of conditions having been made at that time it was too late to adject them afterwards. I do not consider that on the evidence that case could have been made out, but I think it is quite sufficient to say that, as I read the record, not only is there no trace of it in the pleadings, but that these are quite inconsistent with that having been the view of parties. Therefore I shall disregard that view and treat the case on the footing on which it was presented to us on the former occasion, and as it seems to have been presented before the Lord Ordinary, namely, that the contract was completed when the cheque and the ticket were exchanged.

Now this ticket is an elongated piece of paper which is divided into three sections—the outermost of these sections is the part of the ticket which was required as a pass to allow the holder to get on board the steamer; the second is the part left for the insertion of details required by the Government of the United States, which either directly or indirectly could be known only to the passenger and could not be known to the Steamship Company; and the remaining one is the portion which the passenger retained until some days after he was on board the steamer, and which was then obtained from him by the purser or another servant of the defenders. This last portion contains the condition which is founded upon as relieving the defenders of liability. It is noticeable that the conditions are prefaced on this part of the ticket by the word in large type "Notice," and then in smaller type, but larger than what follows, these words appear—"This ticket is issued to and accepted by the passenger subject to the following conditions." One of these conditions is the one canvassed so much in this case, namely, that which restricts the liability of the company to £10 for the loss of or injury to a passenger, or for loss of or damage to or delay in delivering, luggage, the import of which I think is not difficult to extract, but which has been reflected upon as not being very clear.

Now with regard to the construction of this clause I do not think there is any real difficulty. It seems to me that it quite plainly provides that the passenger or his representatives are not to have recourse against the Steamship Company if he is lost on the voyage by shipwreck or other misfortune, or if he is injured, beyond the extent of £10 if he is a first-class passenger, or £5 if he is a second-class passenger. I do not think the words which Mr Mackay commented upon—"at or before the issue of this contract ticket"—have any bearing on the liability in respect of the loss of or injury to a passenger. In my opinion they quite clearly relate only to the question of what is to happen in the case of there being loss or damage to the luggage. As I have already mentioned, the series of conditions are prefaced by the words, "This ticket is issued to and accepted by the passenger subject to the following conditions"—and the passenger has the opportunity of accepting or not accepting the ticket under these conditions as he pleases, and it is only when he has accepted it either expressly or by implication arising from his retaining it and proceeding on the voyage that the contract is concluded.

The Lord Ordinary has found that it is not proved that Mr Hood was actually aware of the conditions set forth in the ticket. But in assoilzieing the defenders his Lordship has proceeded on what is a well-recognised rule in these cases, viz., that the assent of the passenger to the conditions may be inferred from his conduct, and that the company may be freed from liability by the means which the ship company take to bring these conditions under his notice. When the case was last before us the proof which was allowed was as to the terms and conditions of the contract of carriage between the pursuer and the Steamship Company—and the Lord Ordinary has now found that the company took what were reasonable means to bring the conditions before the notice of the intending passenger. In this matter the attitude of the pursuer with regard to the conditions cannot be left out of view. He says quite distinctly—"In my experience as a traveller on board this company's boats"—and it is proved that for ten years or more the conditions have been the same—"I have never troubled my head about these conditions; I have never inquired what they were or looked at them or read the ticket at all until the occasion of this unfortunate voyage." Counsel for the pursuer argued, however, that the means for bringing the conditions on the ticket before the pursuer were not sufficient, but at the proof no question was put to him or to any of the witnesses suggesting what else could or ought to have been done, except this one question which was put to the pursuer in cross-examination, and the answer to which I think exonerates the defenders from pursuing the matter further—"My attention has never been drawn to any notice—I never think of reading a ticket. (Q) Do you think that the way in which the conditions are printed upon that ticket, and the way in which attention is directed to them, are in any way insufficient?—(A) I don't know how to answer you that question." I think that that evidence means this, that the pursuer himself cannot suggest anything further that could have been done to direct his attention to the conditions on the ticket. The pursuer also adds—"It is my evidence now that in all the course of my travelling and receiving and giving up tickets similar to No. 11 of process, I never, either from motives of curiosity or to see what the conditions of my carriage were, read what was printed on them—that is my case"; and on being asked, "Supposing you had looked at your ticket, would you have at once seen the word 'Notice,' and that there were conditions upon it"? he replied, "Yes, if I had looked at it."

It was, however, argued that there was no obligation on the pursuer to read the ticket—that he was under no duty to do so. If by this it is meant that the pursuer was free to disregard the conditions, no matter how distinctly the Steamship Company had on the ticket notified these conditions or the desirableness of reading them, I cannot assent to the argument. On the contrary, reasonable means having been taken by the defenders to direct the attention of the passenger to the conditions, the pursuer was bound, in my opinion, to read them, and if he chooses not to do so, he is not, I think, in a position to enforce a claim such as the present one.

Both counsel for the pursuer maintained that the course which should have been followed was for the shipping clerk to have verbally directed the passenger's attention to the fact that there were conditions. I do not think that that was in the least necessary, or that it would have been in any way more effective than the means which the defenders adopted by printing that notice both upon the ticket itself and upon the envelope enclosing it, where the words "Please read conditions of the enclosed contract" or contract ticket were, I think, so printed and so precise as to put upon the pursuer the duty and obligation of reading the conditions as thus directed. It seems to me that the Lord Ordinary has arrived at a perfectly sound conclusion when he says that reasonable means were taken by the defenders to bring the fact that there were conditions on the ticket to the notice of the passenger, and that the passenger if he had displayed ordinary prudence would have found what the conditions actually were.

The only question in this case is—Did the defenders take reasonable means of bringing the conditions to the notice of the pursuer? I think that they did, and that the fact that the pursuer did not choose to read what was printed on the ticket is no ground for refusing effect to these conditions. On the contrary, in my opinion, these conditions constitute a valid and effective part of the contract, and I am therefore for refusing the reclaiming note.

LORD DUNDAS—I agree with your Lordship and with the Lord Ordinary. As to the more general aspects of the case, I do not propose to repeat, still less to expand, what I said when this case was before us on a former occasion, and in the case of *Williamson*, in which judgment was pronounced on the same day.

As to the evidence, Mr Mackay urged us to hold that the contract of carriage was in fact completed when the conversation to which your Lordship has alluded took place over the telephone. I agree with your Lordship in thinking that that argument will not hold. In the first place, there is no record for any such case, if indeed it is not contradicted by what the pursuer says on record at the close of article 7 of his condescendence; and in the second place, no such case is disclosed by the evidence. I think the contract was completed when Mr May, who admittedly was the pursuer's agent, called at the shipping office, handed in the pursuer's cheque, and received in exchange the ticket in an envelope.

We must, then, deal with the two questions, to which your Lordship has referred, viz. (first), was the pursuer in fact aware that the ticket contained conditions, or what those conditions were; and (second), if not, have the defenders done all that was

reasonably necessary to give him notice of such conditions. As to the first of these questions, the pursuer says he had no knowledge of any conditions—in fact he says that he never does read tickets that he gets—a somewhat rash practice as I think. The Lord Ordinary believed him upon this point, and I certainly see no reason for differing from that conclusion. As to the second question, I think with your Lordship and the Lord Ordinary that it must clearly be answered in the affirmative. I am much disposed to agree with the Lord Ordinary in thinking that it would be difficult to say what further or better means the defenders could have employed to bring the conditions of the contract under the passengers' notice.

It was said by the pursuer's counsel that the attention of the pursuer, or of his agent Mr May, ought to have been specially directed to the conditions. I think that Mr May's attention *was* specially directed to the conditions by the very plain printing which appears at the top of the envelope which he received, with which No. 24 of process is identical. Lastly, the pursuer's counsel made an attack upon the terms of this particular clause. I think the clause is not very well expressed and might with advantage be amended, but I have heard nothing to lead me to the couclusion that it was an unreasonable or unfair clause, nor, so far as we are informed, was it an unusual clause. It is not without interest to note that the pursuer himself, who apparently took occasion on a recent voyage to read these conditions for the first time, makes no suggestion whatever as to whether, and if so, how, the wording of this clause puzzled or offended him. The difficulty seems to have originated with counsel, and not with the pursuer. I am for adhering.

LORD GUTHRIE—I agree. In a question of this kind the law places obligations both on the shipowner and on the passenger. As to the shipowner, if the conditions are to be effectively adjected to the essentials of a contract of passage, then the passenger must have reasonable notice that there are such adjected conditions, the extent of the shipowner's obligation as to notice varying perhaps according to the character of the conditions. On the other hand, as against the passenger, if the shipowner fulfils the duty above stated, then the passenger's failure to read the conditions, and his absence of actual knowledge will not absolve him from their operation if the conditions, whether usual or unusual, reasonable or unreasonable, are intelligibly expressed, fairly placed, in view of the context, and in reasonably legible print. In the present case the shipowners have, in my opinion, discharged the *onus* laid upon them. It appears to me that the passenger has not justified his failure to read the conditions, and so cannot bring himself under the exception to which I have referred.

The pursuer's case came in the end, I think, to turn on the general and important question whether, in addition to or in place of the clear written notice given in this case by the terms of the ticket and the envelope containing it, the defenders were not bound, by word of mouth, before or at the time of entering into the contract, to call the passenger's attention to the fact that the contract contained special conditions. Such a proposition seems to me to be inconsistent with common sense, difficult as well as useless in practice, and not supported by the decisions.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Moncrieff, K.C.—A. M. Mackay. Agents—Macpherson & Mackay, S.S.C.

Counsel for Defenders (Respondents)—Macmillan, K.C.—C. H. Brown. Agents—Webster, Will, & Co., W.S.

HIGH COURT OF JUSTICIARY.

Friday, November 9.

(Before the Lord Justice-General, Lord Johnston, and Lord Mackenzie.)

PANETTA *v.* M'INTYRE.

Justiciary Cases—Statutory Offence—Gaming—Gaming Machines (Scotland) Act 1917 (7 *and* 8 *Geo. V, cap.* 23), *sec.* 1—*Machine Used for a Game in which a Prize or Stake was Awarded or Forfeited Contingently upon the Skilful or Unskilful Operation of the Machine.*

The Gaming Machines Act 1917 enacts, Section 1—"(1) It shall not be lawful to permit in any shop . . . the use of any machine or mechanical contrivance for the purpose of any game, sport, hazard, or competition played or participated in by persons resorting to such shop . . . in which game, sport, hazard, or competition any prize or stake in money or kind is awarded or forfeited contingently on the result of the operation of such machine or mechanical contrivance, whether such operation is automatic or not. (2) Any person who, being the owner, lessee, occupier, keeper, manager, or person in charge of any shop . . . or being the owner, lessee or person in charge, or having control, of any such machine or mechanical contrivance, contravenes the provisions of this section shall be guilty of an offence, and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding £10, or to imprisonment for a term not exceeding sixty days."

An ice-cream vendor permitted a penny-in-the-slot machine to be used in his shop, and a prize in the form of a metal disc, which entitled to two penny worth of goods, was gained by anyone who was successful in operating it The success or failure of the operator depended entirely upon his skill or want of skill. *Held* that an offence had been committed, in respect prizes were given